THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 17590 of 2006

Date 25-08-2006

Between:

M/s.Saparna Infotech Ltd.

..... PETITIONER

AND

Employees Provident Fund Organisation, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No.17590 of 2006

O R D E R :

This writ petition is filed questioning the order dated 25-04-2006 passed by the second respondent herein dismissing the application filed under Section 7A(4) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') as time barred.

Admittedly, an order of assessment under Section 7A of the Act was made against the petitioner-Company on 16-09-2003 determining that a sum of Rs.4,36,659/- was due towards Employees Provident Fund contributions from June, 2000 to November, 2002. Alleging that the said order was passed without any notice and even a copy of the said order was not served on it, the petitioner filed an application under Section 7A(4) of the Act on 05-04-2006 to set aside the order dated 16-09-2003 and to give an opportunity to participate in the enquiry. While the said application was pending, the petitioner filed W.P.No.8688 of 2006 alleging that the respondents were taking coercive steps by arrest and detention of the Managing Director of the Company. The said writ petition was disposed of by this Court by order dated 26-04-2006 with a direction to the Assistant Provident Fund Commissioner to consider the application filed by the petitioner-Company under sub-section (4) of Section 7A of the Act, and to pass appropriate orders in accordance with law within a period of four weeks, and till such time, the impugned notice dated 03-04-

2006 shall not be given effect to.

While so, on 09-05-2006, the petitioner was served with a copy of the impugned order dated 25-04-2006 under which the application filed by the petitioner under Section 7A(4) of the Act was dismissed as time barred. The said order is under challenge in this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

While the learned counsel for the petitioner contended that in spite of the order of this Court in W.P.No.8868 of 2006, the application filed by the petitioner-Company under Section 7A(4) of the Act was dismissed without notice and without going into the merits of the case, the learned standing counsel appearing for the respondents contended that there was a delay of more than two years in filing the application under Section 7A(4) of the Act and the petitioner's application was decided on merits even prior to the disposal of W.P.No.8688 of 2006.

From a perusal of the impugned order dated 25-04-2006, it is clear that it was observed that since the application was filed after a lapse of two years from the receipt of the orders passed under Section 7A of the Act, it was time barred and the second respondent had also gone into the merits of the case and recorded a finding that though the enquiry under Section 7A of the Act was adjourned from time to time, the petitioner neither attended the enquiry nor produced the record. It is not the case of the petitioner-Company that the provisions of the Act are not applicable to it, but the only dispute is with regard to the quantification under the assessment order dated 16-09-2003.

In the circumstances and having regard to the reasons

assigned in the impugned order dated 25-04-2006, I am unable to hold that the order suffers from any infirmity. Hence the Mandamus as prayed for cannot be granted. However, the petitioner is granted leave and liberty to prefer an appeal under Section 7-I of the Act against the order of assessment dated 16-09-2003 within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed within the time specified above, the same shall be received and decided on merits. It is also made clear that pending such appeal the order of assessment dated 16-09-2003 shall not be given effect to provided the petitioner-Company deposits half of the assessed amount within a period of six weeks from today.

The writ petition is accordingly disposed of. No order as to costs.

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25-08-2006

usd